

Self-dealing; loss of interest. A transaction of a private foundation in which it deposited funds in a savings account maintained with a disqualified banking institution on the tenth day of a calendar quarter and withdrew the funds before the end of the next quarter thereby subjecting itself to a loss of interest for the entire period of deposit constitutes an act of self-dealing under section 4941(d)(1)(B) of the Code.

Advice has been requested whether the transaction described below results in self-dealing under section 4941(d)(1)(B) of the Internal Revenue Code of 1954.

A private foundation maintains a savings account with a banking institution which is a disqualified person with respect to the foundation. In the normal course of banking operations, the bank pays interest on the last day of the quarter on funds that have been on deposit for the entire quarter.

On the tenth day of the first calendar quarter, the foundation deposited an amount in the banking institution. It withdrew the funds ten days before the end of the second calendar quarter. Since the funds were not on deposit on the last day of any quarter for the entire quarter, under the bank's rules the foundation was not credited with interest for any period during which the funds were on deposit.

Section 4941(d)(1)(B) of the Code states that self-dealing includes the lending of money between a private foundation and a disqualified person.

Section 4941(d)(2)(E) of the Code states that the payment of compensation by a private foundation to a disqualified person for personal services which are reasonable and necessary to carrying out the exempt purposes of the private foundation shall not result in self-dealing if the payment is not excessive.

Section 53.4941(d)-2(c)(4) of the Foundation Excise Tax Regulations states that the performance of certain general banking services is an exception to the general rule prohibiting the lending of money between a private foundation and a disqualified person under section 4941(d)(1)(B) of the Code and is within the scope of the personal services which do not constitute self-dealing transactions under section 4941(d)(2)(E) of the Code.

The regulations further explain that the general banking services with respect to savings accounts are limited to those accounts in which a private foundation may withdraw its funds on no more than 30 days notice without subjecting itself to a loss of interest on its money for the time during which the money was on deposit.

The payment of interest for the entire time the foundation's money is on deposit is an inherent part of the requirement that the foundation not subject itself to a loss of interest. This

requirement was imposed so that a disqualified banking institution could not obtain the use of the foundation's funds for any period of time without payment of interest for that use.

Under the facts, the foundation did not have the right to withdrawal without subjecting itself to a loss of interest on its money for the time during which it was on deposit. Therefore, the transaction was not within the scope of the general banking services permitted by the regulations and the deposit under the circumstances constituted an act of self-dealing under section 4941(d)(1)(B) of the Code.